STATE OF WASHINGTON
Department of Ecology
Department of Transportation
Department of Natural Resources
May 24, 2010

The Council on Environmental Quality has issued for public review and comment draft guidance on how to consider the effects of greenhouse gas emissions and climate change in a review required by the National Environmental Policy Act (NEPA). The Washington State Department of Ecology submits these comments on behalf of it, the Department of Transportation and the Department of Natural Resources (DNR).

In 1971, the Washington Legislature passed the State Environmental Policy Act, or SEPA. SEPA is based on NEPA. It shares the same overarching policy goal of requiring the government to use all practical means to implement state and local programs in the most environmentally-sound fashion. The Department of Ecology, which oversees SEPA in Washington state, has also been working on draft guidance for consideration of greenhouse gas emissions in our SEPA process. We have included the link to our draft guidance for CEQ's information and consideration when amending its draft guidance. http://www.ecy.wa.gov/climatechange/sepa.htm

We commend CEQ for recognizing the need for guidance in evaluating greenhouse gas emissions and climate change in NEPA reviews. By issuing this guidance, CEQ has provided direction at the highest level that federal agencies and project proponents must examine the future-affected environment differently from the past. Washington State supports CEQ's direction that federal agencies assess the effects of climate change on proposed actions that are intended for long-term use or that may be vulnerable to ecological change. We also appreciate CEQ's statement regarding the need to consider issues of concern to tribal communities and tribal governments. In addition, agencies should look to the tribes as sources of local and regional information on our changing climate. There are several tribes in our state that are leading the way with regard to observed changes, microclimate forecasting and community preparation.

We also appreciate the difficulty in developing this guidance. NEPA is not a perfect fit for analyzing greenhouse gas emissions and their effect on the environment. There are four specific areas where we believe the guidance could be improved:

1) Whether or not emissions below 25,000 metric tons per year (tpy) of CO2e should be assessed.
2) Whether or not to include indirect emissions.
3) When and whether a qualitative as opposed to a quantitative analysis of emissions is necessary.
4) Whether and how to consider the cumulative impacts of greenhouse gas emissions.

Emission levels: The document states in a number of places that direct emissions of 25,000 tpy or more CO2e is a "reasonable reference point" or "indicator" that a quantitative and qualitative assessment may be meaningful to decision makers and the public. At the bottom of page 1, the draft guidance specifically states that for long-term actions with annual direct emissions of *less* than 25,000 tpy, Federal agencies are encouraged to "consider whether the action's long-term emissions should receive similar

analysis" as that for emissions above 25,000 tpy. Taken together, these statements seem to suggest that an agency need not look at emissions below 25,000 tpy.

However, there are also references in the guidance that suggest analysis of emissions without regard to a "reference point." On page 2, the guidance recommends that when an action will result in emissions "in quantities that the agency finds meaningful," the agency should quantify and disclose the expected annual direct and indirect emissions. On page 5, the guidance recommends analysis of emissions sources over all phases and elements of the proposed action over its expected life.

We suggest CEQ make clear that there is no screening level below which emissions need not be evaluated. Otherwise, we may miss opportunities to implement cost effective greenhouse gas reduction measures. Evaluating proposals with emissions that may not be substantial or rise to the level of significance can provide decision makers with important information. "There may still be mitigation measures or alternatives that would be desirable to consider and adopt." [1]

CEQ used the EPA reporting threshold of 25,000 tpy level to establish the "reference point" of 25,000 tpy. The footnote on page 3 points to EPA's mandatory greenhouse gas reporting rule as a "useful, presumptive, threshold for discussion and disclosure of GHG emissions." It alludes to the balance EPA was striving to make between obtaining sufficient information about the nation's greenhouse gas emissions while not overwhelming the agency with too many reporters. NEPA has a wholly different purpose than greenhouse gas reporting to EPA. NEPA is intended to "promote efforts which will prevent or eliminate damage to the environment and biosphere." EPA's greenhouse gas reporting rule is "relevant to implementing the existing [Clean Air Act because] emissions from direct emitters should inform decisions about whether and how to use the Clean Air Act" to reduce emissions. [2] We do not support at this time the inclusion of a reference point of emissions for NEPA analysis. However, if one is developed in the future, it should be based on what is needed for environmental analysis and decision making under NEPA, not EPA's reporting threshold.

Direct and indirect emissions. The final guidance needs to be clear on when and how indirect emissions are included in the analysis. In most places, reference is made only to "direct emissions." However, at the bottom of page 2, agencies are recommended to disclose estimates of "expected annual direct and indirect emissions" associated with the proposed action. Similarly, at the top of page 5, the guidance states that "the direct and indirect GHG emissions from the action should be considered in the scoping…"

We recommend the final guidance be amended to direct Federal agencies subject to this guidance to describe the indirect emissions associated with the types of actions that will typically trigger a NEPA review and determine how those indirect emissions will be analyzed. Where analysis is possible such as emissions associated with construction activities, electricity and vehicle/employee access, the indirect emissions should be included in the NEPA evaluation.

We are concerned that if indirect emissions are not included, the federal goals of energy conservation and reduced energy use cannot be fully realized. Estimating many types of indirect emissions is entirely possible and it is in the project design phase where energy efficiency measures and access choices can most effectively be incorporated. Thus, even a brief qualitative analysis of both the direct and indirect

[1] CEQ, Forty Most Asked Questions Concerned CEQ's NEPA Regulations; Question 39 (citing 40 CFR Section 1501.3(b), 1508.9(a)(2)).
[2] Mandatory Reporting of Greenhouse Gases, Final Rule, FR Vol. 74, No. 209 October 30, 2009, Page 56264.

greenhouse gas emissions of a proposal may reveal cost-effective reduction measures. A well-done qualitative analysis may also provide a rough quantitative estimate that can help the lead agency determine whether or not the analysis is adequate.

Direct emissions are not defined or described in the draft guidance. However, by referencing the EPA Mandatory GHG Reporting Rules, one might conclude that "direct" emissions are only those from point sources. We recommend that CEQ include a description of direct and indirect emissions in the final guidance.

Qualitative v. Quantitative Analysis. We find only two references to a qualitative analysis; most references recommend a quantitative analysis. One reference to analyzing emissions seems to suggest that both should be done (See page 1: "a quantitative and qualitative assessment" may be meaningful to decision makers…"). However, on page 2, the guidance reads that "information on GHG emissions (qualitative or quantitative) that is useful and relevant to the decision should be used…" (Emphasis added)

We would encourage CEQ to be more explicit in recommending when qualitative analysis of emissions is sufficient. The specifics of the project should be considered when determining the level of rigor of the emissions analysis. However, a qualitative analysis likely makes sense for smaller emission sources or projects where a reasonable estimate of the emissions may be sufficient. For larger projects and for stationary sources that will fall under EPA's reporting requirements, more rigorous quantification may be appropriate. We believe it makes sense for lead agencies to conduct an analysis to the point that the significance of the project can be understood. Once there is sufficient information to determine that the impact is negligible or what kind of mitigation could effectively apply, no more analysis need be done.

Cumulative Impacts. The final guidance should clarify that "*the impact of greenhouse gas emission on climate change is precisely the kind of cumulative impact analysis that NEPA requires agencies to conduct."*[3] We are concerned that some of the statements in the draft guidance are confusing on this point.

The draft document states that "climate change is a global problem" "[It] is much more the result of numerous and varied sources each of which might seem to make a relatively small addition to…GHG concentrations." (See page 2.) On page 5, it recommends that the agency focus on an assessment of "annual and cumulative emissions of the proposed action." "Federal actions may cause effects on the human environment that are not significant environmental effects, in isolation, but that are significant in the aggregate or that will lead to significant effects." It also references NEPA's requirement that federal agencies recognize the global character of environmental problems. (See page 9.)

However, the document also states that in many cases the GHG emission of the proposed action may be "so small as to be a negligible consideration" and suggests that some emissions are "neither individually or cumulatively significant." (See page 3.) The examples of projects that might warrant a discussion of the GHG impacts are all very large from a GHG emissions perspective, including a coal-fired power plant. The document also states that GHG emissions from an individual agency action have been found to have "small potential effects." All of this, coupled with the recommendation that only actions that will result

[3] Center for Biological Diversity v. National Highway Traffic Safety Administration, 538 F3d 1172, 1217 (9th Cir 2008).

in *direct* emissions that meet or exceed 25,000 tpy need to be evaluated under NEPA, would result in little assessment of the cumulative nature of GHG emissions.

We understand the difficulty in developing reasonable guidance for emissions that can be incrementally small but cumulatively large. For this reason, we believe that plans that aren't otherwise excluded should also be evaluated under NEPA. This would allow agencies to look holistically at a series of projects that were tied to one overarching plan and ensure that those projects, when taken together, mitigate their contribution to greenhouse gas emissions. Evaluating policies and regulations under NEPA can have a similar outcome when the projects developed under those policies or regulations will meet greenhouse gas reduction goals. An easy example is highly energy efficient state building codes. A project that meet or exceeds those codes will have embedded in it greenhouse gas mitigation strategies.

This difficulty is also why our Washington state guidance makes clear it is a work in progress. We are committed to continuing to update it as it is used and we learn how to better incorporate ghg emissions into this type of analysis. We recommend CEQ be explicit in how it will keep the guidance up to date.

CEQ posed some specific questions regarding land use. Attachment A*, WA Department of Natural Resources - Managing Forests and Agriculture on State Lands* contains some additional discussion for CEQ's questions #4, 5, and #6.

Washington state has been working for at least two years on how forests and agriculture fit into the evaluation of both carbon emissions and carbon sequestration over time. DNR has been examining how to analyze the CO_2 life cycle for public lands and operationalize it in land management. The agency is examining how to appropriately recognize the beneficial effects of land management on GHG emissions and recognize the short and long term GHG reductions of a proposal. Clear specification of the temporal boundaries of analysis will be very important.

Thank you for the opportunity to review and comment on this draft guidance. If you have questions, please do not hesitate to contact Annie Szvetecz with the Department of Ecology at Annie.Szvetecz@ecy.wa.gov. For questions regarding land use, Craig Partridge with the Department of Natural Resources (360-902-1028 or email: craig.partridge@dnr.wa.gov) is available to share DNR's experience and examples on this topic.

Sincerely,

Janice Adair
Special Assistant for Climate Policy
Washington State Department of Ecology

Attachment A:
WA Department of Natural Resources - Managing Forests and Agriculture on State Lands

Below are some specific ideas and examples for some of CEQ's questions related to public lands management.

CEQ question #4. Should CEQ recommend any particular protocols for assessing land management practices and their effect on carbon release and sequestration?

CEQ question #6. How should NEPA analyses be tailored to address the beneficial effects on GHG emissions of Federal land and resource management actions?

In general, focusing narrowly on the "emission" side of this balance (as would be appropriate for emissions from fossil-based energy use) will not provide a complete picture and could lead to lost opportunities to improve carbon sequestration in natural systems. Any protocols that are developed should focus on both carbon release and sequestration effects over time. DNR identified two topics we feel are important to cover in the guidance.

1. Encourage agencies to document the temporary and long term GHG reduction effects of their actions (e.g. changes to long term forest carbon sequestration and storage).
   For example, in forest management, we believe an agency should consider two aspects of carbon emission/ storage. One is the temporary loss of carbon storage in trees brought about by active management to remove dead or dying trees as well as active thinning, thereby reducing the risk of stand-destroying wildfire. Another is the longer-term increase of forest carbon storage brought about by this type of fire management activity, especially in comparison to the effects of inaction in stands with high fire risk. This can be especially important when uncharacteristically severe wildfire could result in permanent loss of forest cover and thus forest carbon storage.

2. Examine whether "emissions" from natural systems like forests can be seen as a natural element of the ongoing carbon cycle, where emissions are simultaneously balanced by forests' absorption of greenhouse gasses.

CEQ question #5. How would uncertainties associated with climate change projects and species and ecosystem responses be addressed in protocols for assessing land management practices?

At a minimum, an explicit adaptive management program will be critical for addressing uncertainties, particularly situations where important impacts are highly uncertain but the agency wishes to proceed because valuable information could be gained from quasi-experimental action. Irreversible commitments should be avoided, and monitoring programs should be emphasized, to build resilience and the ability to adjust into the proposal.